

Chapter 1: The Nature of the Contempt Power



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1.1 Definition of “Contempt of Court”

“Contempt of court is a wilful act, omission, or statement that tends to impair the authority or impede the functioning of a court.” *In re Contempt of Robertson (Davilla v Fischer Corp)*, 209 Mich App 433, 436 (1995).

Examples of contempt of court include disruptive courtroom behavior, failure to appear in court when required, failure to testify when required, and disobedience of a court order.*

*See Chapter 5 for discussion of common forms of contempt.

1.2 Purposes of the Contempt Power

The primary purpose of the contempt power is to preserve the effectiveness and sustain the power of the courts. *People v Kurz*, 35 Mich App 643, 656 (1971). A secondary purpose is to protect and enforce the parties’ rights by compelling obedience to court orders and judgments. *Harvey v Lewis (Appeal of List)*, 10 Mich App 709, 715-716 (1968), quoting *In re Nevitt*, 117 F 448 (CA 8, 1902).

To carry out the foregoing purposes, courts impose three general types of sanctions. For criminal contempt, the court imposes punitive sanctions to vindicate its authority. For civil contempt, the court imposes coercive sanctions to force compliance with its orders. In addition, in cases where actual damage is shown, the court may order compensatory relief for a party. *In re Contempt of Rochlin (Kane v Rochlin)*, 186 Mich App 639, 647 (1990), citing *In re Contempt of Dougherty*, 429 Mich 81, 98 (1987).

*For further discussion of criminal and civil contempt sanctions, see Chapter 4.

*For discussion of the differences between civil and criminal contempt of court, see Sections 2.1–2.3.

Criminal contempt sanctions typically include a jail term and fines that are intended to punish past contumacious behavior. Civil contempt sanctions typically include a fine or jail term that ends when the offending behavior ends and money damages awarded to the injured party.*

1.3 Courts Must Exercise Contempt Power With Restraint

“The power to punish for contempt is awesome and carries with it the equally great responsibility to apply it judiciously and only when contempt is clearly and unequivocally shown.” *People v Matish*, 384 Mich 568, 572 (1971). “Defendants in contempt proceedings should be given every opportunity to exonerate themselves.” *In re White*, 327 Mich 316, 317 (1950).

Courts must exercise “[t]he least possible power adequate to the end proposed.” *Anderson v Dunn*, 19 US (6 Wheat) 204, 231 (1821). See also *In re Michael*, 326 US 224, 227 (1945), *Shillitani v United States*, 384 US 364, 371 (1971), and *United States v Johnson*, 736 F2d 358, 362 (CA 6, 1984). Criminal contempt sanctions should be utilized only after the judge has determined, for good reason, that civil contempt remedies are inappropriate. *Shillitani*, *supra* at 371 n 9.*

For discussion of the misuse of the contempt power by judges, see *In re Hague*, 412 Mich 532, 554–55 (1982) (judge threatened prosecutor with contempt if he continued to file prostitution cases), and *People v Ravitz*, 26 Mich App 263, 269–70 (1970) (defense counsel cited for contempt for conducting extended cross-examination of complaining witness).

1.4 Courts’ Inherent Authority to Exercise Contempt Power

Courts’ authority to punish for contempt is inherent in the judicial power vested in courts by Const 1963, art 6, § 1. In *In re Huff*, 352 Mich 402, 415–16 (1958), the Michigan Supreme Court stated:

“There is inherent power in the courts, to the full extent that it existed in the courts of England at the common law, independent of, as well as by reason of statute . . . , which is merely declaratory and in affirmation thereof, to adjudge and punish for contempt Such inherent power extends not only to contempt committed in the presence of the court, but also to constructive contempt arising from refusal of defendant to comply with an order of the court. . . . Such power, being inherent and a part of the judicial power of constitutional courts, cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it.” (Citations omitted.)

See also *People v Joseph*, 384 Mich 24, 35 (1970), and *In re Contempt of Dougherty*, 429 Mich 81, 91 n 14 (1987), and cases cited therein.

A. Statutory Provisions Illustrating Use of Courts' Contempt Powers

As noted above, courts have inherent power to punish contempt of court. This power cannot be limited by statute, but the Legislature may still provide for use of the contempt power in certain situations. The Michigan Legislature has enacted numerous statutes providing for the use of the contempt power. The broadest of these statutes, §1701 of the Revised Judicature Act, contains provisions illustrative of the uses of the contempt power. That statute states:

“The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

(a) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due its authority.

(b) Any breach of the peace, noise, or disturbance directly tending to interrupt its proceedings.

(c) All attorneys, counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner duly elected or appointed to perform any judicial or ministerial services, for any misbehavior in their office or trust, or for any willful neglect or violation of duty, for disobedience of any process of the court, or any lawful order of the court, or any lawful order of a judge of the court or of any officer authorized to perform the duties of the judge.

(d) Parties to actions for putting in fictitious bail or sureties or for any deceit or abuse of the process or proceedings of the court.

(e) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid, in cases where by law execution cannot be awarded for the collection of the sum.

(f) Parties to actions, attorneys, counselors, and all other persons for disobeying or refusing to comply with any order of the court for the payment of temporary or permanent alimony or support money or costs made in any action for divorce or separate maintenance.

(g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court.

(h) All persons for assuming to be and acting as officers, attorneys, or counselors of any court without authority; for rescuing any property or persons which are in the custody of an officer by virtue of process issued from that court; for unlawfully detaining any witness or party to an action while he is going to, remaining at, or returning from the court where the action is pending for trial, or for any other unlawful interference with or resistance to the process or proceedings in any action.

(i) All persons who, having been subpoenaed to appear before or attend, refuse or neglect to obey the subpoena, to attend, to be sworn, or when sworn, to answer any legal and proper interrogatory in any of the following circumstances:

(i) As a witness in any court in this state.

(ii) Any officer of a court of record who is empowered to receive evidence.

(iii) Any commissioner appointed by any court of record to take testimony.

(iv) Any referees or auditors appointed according to the law to hear any cause or matter.

(v) Any notary public or other person before whom any affidavit or deposition is to be taken.

(j) Persons summoned as jurors in any court, for improperly conversing with any party to an action which is to be tried in that court, or with any other person in regard to merits of the action, or for receiving communications from any party to the action or any other person in relation to the merits of the action without immediately disclosing the communications to the court.

(k) All inferior magistrates, officers, and tribunals for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law after the cause or matter has been removed from their jurisdiction.

(l) The publication of a false or grossly inaccurate report of its proceedings, but no court shall punish as a contempt the publication of true, full, and fair reports of any trial, argument, proceedings, or decision had in the court.

(m) All other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record to enforce the civil remedies of any parties or to protect the rights of any party.” MCL 600.1701.

B. Courts Limited by Penalty Provisions in Statutes

Although courts have inherent contempt powers, where the legislature provides penalties for contempt of court,* courts must abide by such provisions unless they are unconstitutional. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 223 (1966), and *Catsman v City of Flint*, 18 Mich App 641, 648–50 (1969).

*See, for example, MCL 600.1715, discussed in Section 4.1.

1.5 Statutory Provisions Assigning Contempt Powers to Particular Courts

MCL 600.1701, quoted above, assigns contempt power to the “supreme court, circuit courts, and all other *courts of record*” (Emphasis added.)

Under MCL 600.1416(1), the other courts of record are the Court of Appeals, the Court of Claims, and probate courts. In addition, statutes assign the district and municipal courts contempt power. Thus, in addition to the Michigan Supreme Court and Circuit Court, the following courts possess contempt power:

- **Court of Appeals.** The Court of Appeals is a court of record. It therefore has the authority to punish attorneys and parties for disobedience of its orders. *In re Albert*, 383 Mich 722, 724 (1970), and *In re Contempt of Calcutt (Calcutt v Harper Grace Hospitals)*, 184 Mich App 749, 756–57 (1990).
- **district courts.** Section 8317 of the Revised Judicature Act, MCL 600.8317, states in part that district courts have “the same power to . . . punish for contempt as the circuit court now has or

may hereafter have.” See also MCL 600.6502, which assigns municipal courts the authority to exercise contempt powers.

- **probate courts.** Section 801 of the Revised Judicature Act, MCL 600.801, provides that the probate court is a “court of record.” The probate courts, therefore, have the same broad contempt powers as those conferred upon all courts of record by §1701 of the Revised Judicature Act.
- **Court of Claims.** Section 6428 of the Revised Judicature Act, MCL 600.6428, states that “[t]he court of claims is hereby given the same power . . . to punish for contempt as the circuit courts of this state now have or may hereafter have.”

1.6 Contempt Powers of Quasi-Judicial Officers

MCL 600.1701(c) states that judges may find persons in contempt for disobeying the lawful orders of “any officer authorized to perform the duties of the judge.” Thus, a judge may punish a contemnor for disobedience of an order issued or recommended by a quasi-judicial officer. MCL 600.1701(i)(ii) and (iv) provide more specific authority in cases where a person has disobeyed a subpoena. Under these provisions, “[a]ny officer of a court of record who is empowered to receive evidence” and “[a]ny referees or auditors appointed according to the law to hear any cause or matter” may recommend that a judge punish as contempt of court the disobedience of a subpoena.

In addition to these general rules, several statutes and court rules provide more specific guidance on the authority of quasi-judicial officers to punish for contempt.

A. Magistrates

When read together, MCR 4.401(A)–(B) and MCL 600.8511 do not provide magistrates with the authority to conduct contempt proceedings. MCR 4.401(A) requires proceedings involving magistrates to be in accordance with relevant statutes. MCL 600.8511, which lists magistrates’ duties, does not authorize magistrates to conduct contempt proceedings. Moreover, MCR 4.401(B) states that “[n]otwithstanding statutory provisions to the contrary, magistrates exercise only those duties expressly authorized by the chief judge of the district or division” (emphasis added). The word “only” is a word of limitation: even though MCL 600.8511 specifically authorizes a magistrate to conduct a certain type of proceeding, the magistrate may not conduct that type of proceeding unless authorized by the chief judge. MCR 4.401(B) allows the chief judge to limit the types of proceedings conducted by a magistrate, but it does not allow the chief judge to expand a magistrate’s duties beyond those listed in Chapter 85 of the Revised Judicature Act.

B. Referees

Circuit court referees may conduct contempt proceedings but may not issue contempt orders. See MCL 712A.10(1), MCR 3.913 (“juvenile court” matters); MCL 552.507, MCR 3.208 (child custody and parenting time matters) and MCR 3.215 (domestic relations referees); and *Steingold v Wayne County Probate Judge (In re Smith)*, 244 Mich App 153, 157 (2000).*

*See Sections 5.9, 5.10, and 5.22 for detailed discussion of juvenile and domestic relations contempt proceedings.

C. Administrative Hearing Officers

The Legislature has given many governmental agencies contempt powers to punish disobedience of their hearing officers’ orders. In these instances, a statute will either provide for direct authority to exercise the contempt power or require the agency to apply to the circuit court to initiate contempt proceedings or enforce a contempt citation. See, for example:

- MCL 257.322 (Secretary of State hearing officer may punish for contempt, in accordance with rules and practice in circuit courts, witnesses who fail to appear or testify);
- MCL 418.853 (after Workers Disability Compensation Bureau magistrate enters contempt order, magistrate may apply to circuit court for enforcement of the order; see also *In re Contempt of Robertson (Davilla v Fischer Corp)*, 209 Mich App 433, 439 (1995)); and
- MCL 408.1029 (Department of Labor may apply to circuit court for order compelling evidence or testimony, and failure to obey such an order may be punished as contempt).

1.7 Jurisdiction of Contempt Proceedings

The court with jurisdiction of the proceedings during which the contempt occurred has jurisdiction of the contempt proceedings. *People v Joseph*, 384 Mich 24, 34–35 (1970), and *In re Summerville*, 148 Mich App 334, 340–41 (1986) (“juvenile court” has jurisdiction to conduct contempt proceedings for violations of its orders even after the child involved has passed the maximum jurisdictional age).

A person may not be held in contempt of court for disobeying an order the court had no jurisdiction to make. *In re Mead*, 220 Mich 480, 483 (1922), and *Teasel v Dep’t of Mental Health*, 419 Mich 390, 417 (1984).*

*But see Section 5.6(C) (obedience of incorrect orders).

Section 1.7

*See Section 3.9 for a discussion of affidavits.

In cases of indirect contempt, absent a sufficient affidavit, jurisdiction over the alleged contemnor does not attach. *In re Wood*, 82 Mich 75, 83 (1890), *Russell v Wayne Circuit Judge*, 136 Mich 624, 625 (1904), and *Steingold v Wayne County Probate Judge (In re Smith)*, 244 Mich App 153, 157–59 (2000).*

The filing of an unverified affidavit is not a jurisdictional defect; it may, therefore, be cured by amendment. *Stoltman v Stoltman*, 170 Mich App 653, 656–57 (1988).